for and on behalf of the plaintiff in the course of his management of the plaintiff's property. But again that was not a material issue. Whether the tenancy agreement was entered into by the father as agent or as guardian, the plaintiff, as the person in whom the premises are vested, was entitled to sue, when he came of age, for his remedies under the agreement.

Although it is not referred to in the Grounds of Appeal, Mr. Smith also argued before us that the notice to quit was bad for ambiguity, and he cited the case of *Phipps & Co. v. Rogers*[2] In that case the notice was in the following terms :—

"We hereby give you notice to quit and deliver up to us . . . . . on the earliest day your tenancy can legally be terminated by valid notice to quit given to you by us at the date of the service hereof . . . . . ."

Thus the tenant was left to ascertain the date on which he was required to leave "as a problem not of fact but of law." It seems to me that the notice in the present case is in no way comparable with the notice in *Phipps & Co. v. Rogers*[2], and that it is not objectionable. The notice here is dated the 27th June, 1947, and it says :—

"We . . . . . hereby give you notice to quit and deliver up possession on the 31st day of July, 1947, or at the expiry of the next complete month of your tenancy which will terminate more than one month from the date of the receipt by you of this letter . . . . . ."

The first paragraph of the tenancy agreement reads as follows :—

"Tenancy shall be monthly and may be terminated by either the tenant or the landlord on giving a month's notice in writing terminating with a completed month of his tenancy."

Mr. Smith says that although the tenancy was a monthly tenancy reckoned according to a lunar month, the notice is bad because it refers to a calender month. But a calendar month is not mentioned in the notice. The term used is "complete month", and the same term is used in the first paragraph of the tenancy agreement. If the tenancy is reckoned according to a lunar month, as from the terms of the tenancy agreement appears to be the case, then the expression "complete month" in the notice refers to a completed lunar month. I can see no ambiguity about this notice if it is read in conjunction with the tenancy agreement.

In my opinion the appeal should be dismissed with costs.

Storr, J. : — I concur.

Abbott, J. : — I concur.

Appeal dismissed.

WINTON v. REX.

[App. Crim. Juris. (Brown, Ag. C.J.) May 30, 1951]

[Singapore — Magistrate's Appeal No. 39 of 1951]

Evidence — Evidence of wife's resources inadmissible — Charge under s. 165 of the Penal Code — Evidence (Special Provisions) Ordinance, 1946, s. 2(1) — Penal Code, s. 27.

In this case the appellant was convicted under s. 165 of the Penal Code of accepting a Raleigh bicycle without consideration from one Lim Chin, a building contractor, whom he knew to be likely to be concerned in business relating to building contracts transacted by himself as a public servant. He was sentenced to six months simple imprisonment and fined $1,000 or a further six months simple imprisonment in default. During the course of the trial evidence of the pecuniary resources of the appellant's wife was admitted under section 2(1) of the Evidence (Special Provisions) Ordinance, 1946.

Section 2(1) reads: "2. — (1) In any trial of or inquiry by a Court into an offence specified in the Schedule, the fact that an accused person is in possession, for which he cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income, or that he has, at or about the time of the alleged offence, obtained an accretion to his pecuniary resources or property for which he cannot satisfactorily account, may be proved and may be taken into consideration by the Court as if it were a relevant fact within the meaning of the Evidence Ordinance."

The Schedule referred to above includes s. 165 of the Penal Code.

The learned District Judge who tried the case held that the evidence of the pecuniary resources of appellant's wife was admissible under s. 27 of the Penal Code.

Held, that since there was no evidence at all to show that the pecuniary resources, which appeared in the wife's bank account were being held by her on account of the appellant, this evidence was inadmissible.

Appeal dismissed. Conviction upheld. Sentence of imprisonment quashed. Sentence of fine to stand.

MAGISTRATE'S APPEAL.

Mark Morrison for the appellant.

A. V. Winslow for the Crown.

Cur. Adv. Vult.

Brown, Ag. C.J. : — This appellant was convicted under section 165 of the Penal Code of accepting a Raleigh bicycle without consideration from one Lim Chin, a building contractor, whom he knew to be likely to be concerned in business relating to building contracts transacted by himself as a public servant. He was sentenced to six months simple imprisonment and fined $1,000 or a further six months simple imprisonment in default.

The evidence for the prosecution was that the bicycle was bought by Lim Chin as a present for the appellant's son aged 14, that it was sent to the appellant's house without his knowledge, and that the appellant endeavoured to refund the $165 which Lim Chin had paid for it. Lim Chin, who was called by

the prosecution, said that the appellant was angry because he had tried to force a present on him and counted out $165 in notes which he handed to Lim Chin. Lim Chin refused to accept the notes and left them on a table before leaving the appellant's office. The appellant denied that the notes were left on the table and said that after handing them to Lim Chin he never saw them again. I accept the learned District Judge's finding of fact that Lim Chin did not take away the $165. The appellant in his evidence did not allege that Lim Chin took the money away with him. He said that after Lim Chin left he saw no money on the table and that he had never seen the money again. I agree with the view taken by the learned District Judge that it is incredible that the appellant, at an interview of this kind no one else being present and with nothing to distract his attention, should not have noticed Lim Chin putting the money on the table.

Undoubtedly it was the duty of the appellant to have followed Lim Chin out of the room or in some way to have forced him to accept the money which he had handed to him. But if the evidence in this case had been confined to the facts of this particular transaction a lenient view might have been taken of it, and it would not have merited a sentence of imprisonment.

But recourse was had to the Evidence (Special Provisions) Ordinance, 1946, whereby in a trial of an offence under section 165 of the Penal Code the fact that an accused person is in possession, for which he cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income, may be proved in evidence. Thus where a person who has embarked upon a course of peculation is charged in respect of one wrongful transaction, the fact that he is in possession of increased pecuniary resources, as shown for example in his bank account, will be a relevant fact in regard to the particular transaction with which he is charged; and unless he can satisfactorily account for them, may be taken into consideration by the Court. It is to be noted that the pecuniary resources which are covered by the Ordinance are those which are in the possession of the *accused*. The Ordinance does not cover the pecuniary resources or property which are in the possession of "any other person whom, having regard to his relationship to the accused person or to any other circumstances, there is reason to believe to be holding such resources or property in trust for or on behalf of such accused person or, in the case of the wife, child, father or mother of an accused person, as a gift from such accused person." The words which I have quoted are taken from section 13(2) of the Prevention of Corruption Ordinance, 1950, of the Federation of Malaya.

In this case the learned District Judge admitted evidence of the pecuniary resources of the appellant's wife. And they presented a formidable picture. In less than eight months this lady had made cash deposits to her banking account of $22,660. No other part of the Crown case presented a more formidable picture than the evidence which related to the accretion of the resources of the appellant's wife. Nevertheless that evidence was inadmissible by our law. The admission was sought to be justified by a combination of section 2(1) of the Evidence (Special Provisions) Ordinance, 1946, with section 27 of the Penal Code, which read as follows:—

> "27. Where property is in the possession of a person's wife, clerk or servant, on account of that person, it is in that person's possession within the meaning of this Code."

I do not agree with the learned District Judge that that section greatly enlarges the meaning of 'possession' for the purposes of the Penal Code. That section merely means that if a man hands his property to his wife or servant to keep for him, he still retains the legal possession of that property, though the physical possession is in his wife or servant. There is no evidence at all to show that the very substantial pecuniary resources which appeared in the wife's bank account were being held by her on account of the appellant. There was evidence that in the appellant's house were a number of valuable articles. The appellant accounted for them by saying that they were purchased by his wife, whom he represented as a lady of means.

Holding as I do that the evidence regarding the wife's pecuniary resources was inadmissible, I invited Mr. Winslow, on behalf of the respondent, to draw my attention to any property or pecuniary resources which could be proved to belong to the appellant. He was only able to direct my attention to the Ford car which the appellant bought three months after he had been in the country, at about the time of his wife's arrival. In examination-in-chief the appellant says that he bought a Ford V-8, which he needed when his family arrived in June 1949. In cross-examination he says that he bought it just about the time when his wife arrived (on 8th June 1949). He says that he paid two cheques of $1,000 and $1,185 in cash. Only one cheque for $1,000 appears in his bank account, under date the 7th of June 1949. Where the other cheque came from we do not know, as he does not appear to have been asked. He accounts for the $1,185 in cash by having accumulated some of it since his arrival and by having

brought the remainder in notes from England in contravention of the Finance Regulations. Later the Ford was traded in for a Buick, the balance, according to the appellant, being paid for by his wife. But later a Plymouth car was purchased, which according to the appellant was entirely paid for by his wife.

Mr. Morrison, on behalf of the appellant, has argued that the conviction must be quashed upon the ground that if the learned District Judge's mind had not been prejudiced by the admission of the inadmissible evidence of the wife's pecuniary resources, his finding of fact that Lim Chin left the $165 in notes upon the appellant's table might have been different. I do not agree with that argument. It seems to me that the evidence which strictly related to the charge on which the appellant was convicted, was so clear that if there had been no other evidence in the case he must have convicted upon that charge.

Secondly Mr. Morrison argued that the conviction must be quashed because no particulars are contained in the charge upon which the appellant was convicted as is required by section 163 of the Criminal Procedure Code. The charge upon which the appellant was convicted was the alternative charge. Particulars were given in the first charge (of which the appellant was acquitted), in which he was charged with corruptly accepting the Raleigh bicycle on or about the 24th day of July 1949 at Rochore Canal Road. These particulars were not given in the alternative charge although it is to be noted that on 27th January 1951 when the case first came before the Court, the Crown undertook to furnish the particulars. But I have to ask myself whether the omission to furnish particulars has occasioned any failure of justice. Section 166 of the Criminal Procedure Code provides that no error in stating the offence or the particulars and no omission to state them shall be regarded as material unless the accused was in fact misled by such error or omission. The appellant knew that he was being charged with accepting the bicycle as a present, contrary to section 165 of the Penal Code. And whether the offence was technically committed on the 24th of July when the appellant saw the bicycle in the presence of Lim Chin in Rochore Canal Road, or whether it was committed some days later in his office when he allowed Lim Chin to leave the money on the table, does not appear to me to affect what the appellant well knew was the issue in the case, namely, did he pay for the bicycle or did he accept it as a gift without paying for it.

In the result the conviction is upheld. The evidence relating to the wife' resources must be disregarded, and the sentence of imprisonment is quashed. The fine of $1,000 or six months simple imprisonment in default will stand.

Appeal dismissed.

HAROON BIN GURIAMAN
v.
NIK MAH BINTE NIK MAT & ANOTHER.

[Orig. Civ. Juris. (Briggs, J.) June 3, 1951]

[Kota Bharu — Originating Motion No. 8 of 1951]

Land — Sale of land — Equity — Competing equities caveat subsequently registered — Whether person with higher priority entitled to warn it off.

Where competing equities arise, their relative priority inter se at the moment before a caveat is imposed to protect either will be determined by the ordinary rules of equity. If a caveat is then put on to protect that which has the lower priority according to such rules, it may be warned off by the person entitled to the higher priority.

Case referred to :—

(1) *Vallipuram Sivaguru v. Palaniappa Chetty* (1937) M.L.J. 59.

ORIGINATING MOTION.

Parties appeared in person.

The facts appear sufficiently from the judgment.

Briggs, J. : —Mohamed bin Abdul Rahman, the second respondent, is registered as the proprietor of Lot No. 945 in the Mukim of Gading Galoh in the Daerah of Pulai Chondong and was so registered in 1946. On 6th August, 1946, he entered into a written agreement with the applicant, Haroon bin Guriaman, agreeing to sell this land together with two lots, Nos. 472 and 474 in the Mukim of Kerawang, for a sum of $3,000 the receipt of which he acknowledged. He gave a licence to Haroon to go into occupation of the land. He undertook to transfer the land as soon as this became possible on the resumption of normal Land Office work.

On 29th January, 1948, Mohamed entered into another written agreement by which he undertook to sell Lot No. 945 in the Mukim of Gading Galoh to Nik Mah, the first respondent, for $935, $800 of which was paid at the time of the agreement; the remaining $135 was to be paid on presentation of the transfer. Completion was to be on the lifting of the Moratorium. He gave a licence to Nik Mah to go into occupation of the land.

On 27th January, 1951, Nik Mah signed a plaint in Civil Suit No. 9 of 1951 whereby she claimed